

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4235 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?
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SAIYED MIRSAB MIYA AMIR MIYA

VERSUS

THE STATE OF GUJARAT & ANR.

Appearance:

None present for the petitioner
Mr.Mukesh Patel for the respondent

Coram: S.K. Keshote,J

Date of decision:3.3.97

C.A.V. JUDGMENT

The matter was called out for hearing in the

first round, then in the second round and lastly in the third round, but none appeared on behalf of the petitioner. Perused the Special Civil Application and heard Shri Mukesh Patel.

2. On 17th August, 1984, this Court has ordered, "Rule. To be heard with SCA 931/84 and the group. Ad-interim stay against further proceedings". The Special Civil Application No.931 of 1984 has already been decided by this Court on 15th July, 1996. That petition has been accepted, the Rule was made absolute. The facts of this case, briefly, are that this Special Civil Application is directed against the show cause notice issued by the Government dated 4.2.83 under which the petitioner was called upon to retain the land bearing Survey No.609 of village Isanpur, Taluka-City Ahmedabad, admeasuring 59894 sq.m. in the same condition, and that no change should be made in respect of the physical condition of the said land. The petitioner was called upon to show cause why the permission granted under Section 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976, (hereinafter referred to as the Act 1976) should not be cancelled, and the case has been put under revision under Section 34 of the Act 1976.

3. A writ petition against the show cause notice is not maintainable. Whatever grievances and objections the petitioner has against the show cause notice, the same have to be given out in the reply to be filed against the said show cause notice. Only when the matter is finally decided, the petitioner may approach to the appropriate redressal forum available under the Act 1976, and if there is no remedy available, then to this Court under Article 226 of the Constitution. The final order u/s.34 of the Act 1976 has not been passed. So far as the decision of this Court in Special Civil Application No. 931 of 1984 is concerned, there the challenge has been made by the petitioner to the extent where the State Government passed an order directing the petitioner therein to maintain status-quo with respect to certain parcels of land. The Court relying on the decision of this Court in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat & Ors., reported in AIR 1994 GUJ.26, held that the interim order has been passed without giving show cause notice. That case is clearly distinguishable from the present one. In that case, interim direction was given by the authority under the order dated 29th April, 1983 directing the petitioner to maintain status quo with respect to the disputed lands and the show cause notice under Section 34 of the Act

1976 was issued thereafter on 15th September 1983 for the purpose of revising the order, annexure A. So that was a the case where the show cause notice was issued under Section 34 of the Act 1976 after the order of interim direction. That procedure was held to be not permissible in view of the Division Bench Decision of this Court in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat (*supra*). The relevant portion of the judgment in Special Civil Application No.931 of 1984, is reproduced....R

"3. As rightly submitted by learned Advocate Shri Abichandani for the petitioners, no interim direction could be issued under Sec.34 of the Act without issuing the show-cause notice thereunder for revising the impugned action or order passed by respondent No.2. Learned Advocate Shri Abichandani has relied on the Division Bench ruling of this Court in the case of Vasantlal Chhotalal Khandwala v. The State of Gujarat and others reported in AIR 1994 Gujarat 26 in support of his aforesaid submission. It has been urged that no show-cause notice has preceded the interim order at Annexure B to this petition. Learned Assistant Government Pleader Shri Sompura for the respondents has, on instructions, stated that the show-cause notice under Sec.34 of the Act was issued on 15th September 1983 for the purpose of revising the order at Annexure A to this petition. It thus becomes clear that the show-cause notice was issued after the order of interim direction at Annexure A to this petition. This is not permissible in view of the

4. The facts of the case in hand are altogether distinguishable. Annexure 'A' is the show cause notice under Section 34. Under the said show cause notice, it has been informed to the petitioner that a decision has been taken to review the order passed by the Competent Authority and Additional Collector, Ahmedabad being No.ULC.51.81 dated 2.7.82 under Section 21(1) of the Act 1976, sanctioning thereby the plans for construction of residential houses for the people belonging to weaker sections, in so far as its propriety, legality and

regularity is concerned. The grounds on the basis of which the order of the competent authority and Additional Collector, Ahmedabad, was sought to be reviewed, have also been given therein. It was stated therein that before proceeding further, you are hereby given an opportunity to make your submissions and for the purpose, on 8.7.83 morning at 12.00 o'clock, hearing is kept and you are informed to remain present at the above address at the time mentioned above without fail. If you do not remain present, it will be presumed that you do not have anything to say and further proceedings will be initiated accordingly which you may please note. At the end of this show cause notice, the authority has made the order, "it is hereby ordered that till the present proceedings are over, the order passed by the Competent Authority as mentioned above shall be kept in abeyance." So it cannot be said that the interim order has been passed by the authority before giving the show cause notice. The show cause notice has been given and the interim order has also been passed, and hence the decision of this Court in Special Civil Application No.931 of 1984 is of no help to the petitioner. In view of this, it is clear that the State Government was competent to give show cause notice to the petitioner under the Act 1976 for revision of the order passed by the competent authority cum Additional Collector, Ahmedabad, granting permission under Section 21(1) of the Act 1976 for construction of houses for the people belonging to weaker sections. The writ petition against the show cause notice is not maintainable in these facts and a reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., reported in 1996(1) SCC 327. In this Special Civil Application the Court is concerned with the question of entertaining the writ petition against the show cause notice issued by the Competent Authority. The petitioner has not made an attack on the validity of any of the provisions of the Act 1976. Even there is no question of infringement of any fundamental rights guaranteed by the Constitution. It cannot be said to be ex-facie nullity or totally without jurisdiction. The Hon'ble Supreme Court has held that in such case, for entertaining a writ petition under Article 226 of the Constitution of India against the show cause notice, at that stage it should be shown that the authority has no power or jurisdiction to entertain upon an inquiry in question. In all other cases, it is only appropriate that the party should avail of alternative remedy and show cause against the same before the authority concerned and can object regarding jurisdiction also. In the event of adverse decision, it will certainly be open

to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking jurisdiction under Article 226 of the Constitution of India. The present is the case of second category and as such, the only appropriate remedy for the petitioner was to show cause against the action proposed to be taken by the authority. The challenge is made by the petitioner to the show cause notice, and the same is without any substance and merits.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, granted by this Court stands vacated. No order as to costs.

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(sunil)